

**EGREMONT PLANNING BOARD
PUBLIC HEARING
MINUTES
PROPOSED BYLAW AMENDMENT, BY-RIGHT RECREATION USES**

Wednesday, April 8, 2015

8:00 p.m.

Present: **Planning Board:** Helen Krancer (chair), Mark Holmes, Don Pulfer (clerk)
 Citizens, abutters, and interested parties: 17 attendees (ref. sign-in sheets, attached)

Notice – The clerk read the notice for this meeting:

Notice is hereby given pursuant to the provisions of Chapter 40A, Section 5 of the Massachusetts General Laws that the Egremont Planning Board will hold a public hearing for a proposed amendment to the Zoning Bylaw of the Town of Egremont, Massachusetts to add ski areas and golf courses to §4.1.1.2, Uses and Structures Permitted in the General District by Right. The hearing will take place in the downstairs meeting room, Town Hall, Route 71, Egremont, Massachusetts on Wednesday, April 8, 2015 at 7:00 p.m.

The language of the proposed bylaw changes can be viewed at Egremont Town Hall or on the town's web site, <http://www.egremont-ma.gov> .

The above was posted, and published in the Eagle for two consecutive weeks.

Helen Krancer – Told the assembled group that we are here to discuss the implications of this petition, how good or how bad it might be for abutters and for the town. She asked if there are any signers here tonight to speak for the petition. None so chose to speak.

David Campbell – Asked what influenced all these people to sign the petition. David was one of the signers. He understood that there is activity in town that would impinge on Catamount's property rights. He could not speak to the meaning of this petition.

Richard Allen – would give the same by-right permission as residences and farms, to make changes without a special permit. Commercial establishments may proceed with special permits; this change would remove them from the category of special permit to one of by right.

Elizabeth Goodman – read most of her letter to the Planning Board (attached). Letter urges the Planning Board to oppose this bylaw change. It claims that the language is unclear; does it allow pre-existing buildings and uses, or any thing that might be built in the future? The bylaw already allows commercial uses by special permit so that the Planning Board can assess and regulate such things as parking,

safety, hours, etc. If adopted it would eliminate the need for special permit. It would allow any new ski area or golf course, by right, and then install other recreational uses. It appears to allow any buildings or structures without town review. The language is vague and contradictory, and it would allow all kinds of recreational uses anywhere in town, with none of the typical controls. It is an effort to eliminate certain land use controls in the Town of Egremont.

In light of the recent news that the Town will appoint an *ad hoc* committee to review Catamount's situation regarding pre-existing, non-conforming use, Ms. Goodman asked if Catamount supports this petition?

Charles Flynn – Asked to hear residents speak to what are the drawbacks to this petition.

Elliot Snyder – Special permit process allows all citizens to have a say in what goes on in town. Abutters should have some input in changes to uses, new buildings, etc. Is there something evil in the special permit process? It allows all of us to have a say in large scale, commercial development.

Richard Allen – We are talking about a ski area and a golf course, not a large scale commercial development.

Elizabeth Goodman represents Shemshack LLC, the person who owns the house who is causing Catamount so much trouble. We don't have zoning in Egremont. Commercial enterprises can be placed next to residential. We are talking about a ski area and a golf course that existed prior to the bylaw. They existed prior to zoning in Egremont. This change only covers Catamount and the golf course. Bicycling, and dirt bikes, etc. would be allowed by right. Language applies only to these two properties.

Karen Berger – She supports Catamount in their operations, however, Richard's comments that this would allow dirt biking, etc., would not be acceptable to her as a neighbor and abutter. If this is unlimited, it is not acceptable.

Rich Edwards – Catamount supports a bylaw change that makes sense; a bylaw change is necessary for recreational use. He wants certainty in his business operations, a more streamlined process.

Bill Wood – Catamount presently is protected by Section 6 of MA 40a, as a pre-existing non-conforming use; it has been so protected since this bylaw was adopted. This proposal still leaves it as a pre-existing, non-conforming use. The petitioners have offered a poorly worded and confusing change. The wording in the proposal puts this right back in the pre-existing, non-conforming use category; Catamount existed prior to the zoning bylaw, so the state law already protects its use. He does not understand what the problem is for Catamount; they got the special permit for

a change of use (aerial park). There has been a suit by an abutter, but that is not because of any decision by the Zoning Board of Appeals.

Putting Catamount under a by-right section of our bylaw will not change anything for them. Bill said that he does not understand why Catamount would want this kind of bylaw change. He expressed confusion as to why we are here; Catamount already is protected as a ski area.

Tom Gilbert – Suggested that the Planning Board ask town counsel about the costs to the town of lawsuits from Catamount and Shemshack. There is confusion and misunderstanding of our bylaws, witnessed by the appeals.

Helen Krancer – asked Tom if he feels that Catamount, probably the largest business in town, should be treated as a residence? Should they be allowed to do whatever they want without any town review?

Tom Gilbert – we are not a residence; we are a business. We have been for 75 years. Now we need a bylaw change so that we can operate with certainty. There should be amendments to this proposal from the floor so that we could eliminate dirt bikes or other potentially harmful uses.

Charles Proctor – If Catamount and the golf course are recreation and allowed by-right, do such things as setbacks revert to residential uses? This is too vague for me, and probably also for the Attorney General.

Charles Flynn – Shemshack Corporation has been using our bylaws to target Catamount. We need to avoid spot zoning, because it is illegal, but why not figure out what we CAN do for Catamount. This could be amended on the town meeting floor, be successful and palatable to abutters. The Planning Board should have been planning for issues such as this. The board told Charles that they could not make this a priority (sic).

Karen Berger – When Catamount was planning an aerial park, the town attorney told them that they did not need a special permit; he was wrong, and it cost Catamount a lot of money. The ZBA could have denied it, hurting Catamount.

Elizabeth Goodman – The aerial park and Hakim's (Shemshack LLC) construction went on more or less concurrently. She thinks that the special permit hearing was a good example of democracy at work.

Helen Krancer – asked if anyone knows who wrote this proposal. No answer.

Don Pulfer – announced that the Planning Board has emails from a number of people who wrote in support of Catamount (all attached).

Helen Krancer – summarized the content of the emails, which said that we should support Catamount in whatever way we can.

Richard Allen – This creates a separate category as a newly allowed use; it does not make Catamount a ‘residence;’ Catamount is a business use.

Richard Burdsall – spoke in support of Catamount. Ski areas need to do more than just skiing in order to survive.

Tom Gilbert – In answer to Helen’s earlier question, he supports this proposal; it would be workable with amendments.

Helen Krancer – assuming this proposed committee creates a workable bylaw, would Catamount still support this proposal?

Tom Gilbert – yes, they are two different approaches.

Bill Wood – hopes that people will want to support Catamount, but Planning Board and Zoning Board of Appeals need to conform to the law; they cannot be swayed by the behavior of abutters, etc. This *ad hoc* committee, still to be appointed, better do a good job. It won’t work with 20 people supporting something with signatures on a petition without any background or knowledge of land use law.

Elizabeth Goodman – There is a process when a town adopts a bylaw change. To take amendments from the floor that change the essence of the proposal would not pass muster with the Attorney General. It would not have met the MA 40a requirements for adopting bylaw changes, specifically public hearing and Planning Board recommendations.

Richard Allen – That decision would be up to the moderator, the select board, the town counsel, and ultimately the attorney general. “Significantly outside the scope of the original proposal...” is the operative language. Perhaps the Planning Board would want to recommend amendments.

Bill Wood – Could I put up a miniature golf course on my property that I have owned for 100 years?

Hearing closed at 8:08 p.m.

Respectfully submitted,


Donald Pulfer, Clerk

Reviewed and approved by Planning Board at its meeting April 13, 2015

Attachments

Town of Egremont - Public Hearing

4-8-2015

Citizen's Petition - By-right
Use for Catamount Ski Area
of Egremont County Club

NAME

Address

Elisabeth Goodme

CAIN HIBBARD & MYERS PC
66 WEST ST.

Bill Wood

Pittsfield MA

Richard Allen

119 HILLSDALE ROAD

Jennifer F. Post

49 2nd Street, Egremont X

David Graefe

Claverack, NY

Tom Gilbert

39 Birch Hill Rd Crayville NY

Mary Wexler

32 Bentrup Ct. Lenox MA - Catamount

Gillian Snyder

96 Prospect Lake Rd

Kate Allen

37 Underwater Rd.

Rosemary Carpenter

313 Broadwood, Rockville

Charles Flynn

6 Fisher Ln.

EDWARD REGENDATH

158 Jug End Road

Richard H. Burdick

39 ROWE ROAD

Tom Sierau

113 BALDWIN HILL ROAD

Richard Edwards

66 Boice Rd

11 Hilltop Rd

Citizens' Petition - By-right Use
4-8-2015 Page (2)

Name	Address
Charles Proctor Karen Berger	Baldwin Hill Rd 4 Fisher Lane

Cain Hibbard & Myers PC
Counselors at Law

377 Main Street, Williamstown, Massachusetts 01267, Tel. 413-884-0006 Fax 413-443-7694
Direct Dial: 413-629-1312 email: egoodman@cainhibbard.com

Elisabeth C. Goodman

April 8, 2015

BY HAND DELIVERY

Planning Board
Town of Egremont
Town Hall
P.O. Box 368
Egremont, MA 01257

Re: Proposed Zoning Amendment to Change By Right Uses in the General District

Dear Members of the Planning Board:

This firm represents Shemshack LLC ("Shemshack"), the owner of 13 Nicholson Road, Egremont, MA. Catamount Development Corporation ("Catamount") operates a ski area on the property abutting Shemshack. A petition to change the by-right uses allowed in the General District has been filed with the Planning Board. For the reasons set forth below, we strongly urge the Planning Board issue a report recommending against the proposed bylaw amendment.

1. The Proposed Amendment

The proposed amendment seeks to change Section 4.1.1.2 of the existing Zoning Bylaw by adding a new sub-section "g" as follows:

Ski areas and golf courses, and the buildings and structures from time to time located thereon, that existed prior to the adoption of this Zoning Bylaw, including other recreational uses on the premises occupied thereby.

Section 4.1.1.2 specifies the uses that are allowed by right in Egremont's General Zoning District. This proposed amendment would add ski areas, golf courses, and "other recreational uses."

The language regarding buildings and structures is inconsistent. It appears to allow by right structures that will be located from time to time on properties with golf courses and ski areas. It also adds the phrase "that existed prior to the adoption of this Zoning Bylaw." It is not at all clear what this means. Is it intended to limit the structures that are placed on these properties to those that existed before the Zoning Bylaw? Do the words "this Zoning Bylaw" mean the law at the time the amendment is passed? Or some law that existed before the amendment was passed? The lack of clarity is troubling.

2. The Existing Zoning Allows Pre-Existing NonConforming Uses

Under the existing zoning bylaw in Egremont, Section 4.3.1, the Zoning Bylaw does not apply to structures or uses lawfully in existence or lawfully begun at the time of the adoption of this Bylaw. So, for example, operation of Catamount Ski Area is a pre-existing nonconforming use not subject to zoning regulations.

3. Retail and Consumer Service Establishments and Certain Size Accessory Structures Allowed By Special Permit

Section 1.1.3.4 allows new retail and consumer services establishments to operate by special permit. Section 4.1.1.3 establishes the procedures for special permit review. Special permits are the appropriate method to control activities such as the addition of new recreational uses. The Planning Board can verify that the number of customers, hours of operation and traffic will be not cause a problem to the residential dwellings in the neighborhood. Under G.L. c. 40A, §9, special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law. The Planning Board can create balance and harmony in operation of competing uses by imposing safeguards such as limitations on time or use.

4. Effects of the Proposed Amendment

Under the current zoning scheme, operating a commercial business is subject to reasonable regulations, such as controls on the hours of operation, parking, traffic, and lighting. If the bylaw amendment is adopted as proposed it will eliminate the requirement for special permits for many kinds of this type of use. The bylaw amendment will affect all the property in the Town of Egremont by removing the ability of the Planning Board to have any oversight over anyone who opens a golf course or ski area and then uses the property for other recreational uses. Without zoning controls over these uses, a developer could build a recreational park of any size, with buses and related traffic, and the town would have no controls over access routes or parking, and no limits on noise. It is not clear whether the Town could control construction of condominium units on properties with ski areas, golf courses and recreational uses, since the proposed amendment appears to allow any building or structures on such properties.

If passed, the bylaw will not just affect existing ski areas or golf courses. Any developer can construct new golf courses or ski areas and related facilities, including vehicle maintenance sheds, large parking lots, outdoor activity centers, with trucks and buses, and other commercial operations, which could operate right next to homes. The vague and contradictory language means the bylaw, if adopted, would create uncertainty and thus make investment in Egremont a risky proposition.

The proposed Amendment would cause other deleterious changes. It would allow businesses to operate right next to homes. It would allow all types of commercial activities, such as mini-golf, go carts, trampolines, bouncy castles, boat ramps and boat rentals, in any location in town, with no controls on the traffic, parking, number of customers, or days and hours of

Zoning Board of Appeals

April 8, 2015

Page 3

operation, right next to homes. There would be no controls on the lighting of any parking lots constructed for these businesses and no control on accessory buildings of any size. The proposed bylaw allows all the specified activities as uses by right, so the special permit cannot regulate the hours, parking, noise, drainage or other aspects of the uses allowed by right.

The bylaw amendment is an effort to eliminate certain land use controls in the Town of Egremont. Zoning districts have been the approved method of controlling land use in America since the landmark United States Supreme Court case *Euclid v. Amber*, 272 U.S. 365 (1926). In a historic decision supporting zoning, the Court held that the separation of zones of residential, business and other uses bear a substantial relationship to preserving public health and safety. This proposed bylaw amendment attempts to override that long-standing sound wisdom by eliminating zoning review, and allowing free rein to business and commercial operations in residential neighborhoods.

We urge the Planning Board to recommend against this proposal. Thank you for your consideration of this request.

Very truly yours,



Elisabeth C. Goodman

From: **Richard Allen** rmallencsm@gmail.com
Subject: {EgremontPosts} Catamount
Date: April 7, 2015 at 11:24 AM
To: EgremontPosts@googlegroups.com

There is an important Planning Board hearing On April 8 at 7:00 p.m. to assess a proposed change to the town's zoning bylaw. The change was proposed by citizens' petition. It is designed to protect Catamount from the continuing delaying tactics of Mr. Hakim (the owner of the very large house adjacent to Catamount on the south side of Route 23), who has been trying, among other things, to shut down the ropes course put in by Catamount some years ago and to prevent Catamount from building a needed maintenance building. His actions have caused the town to incur significant legal expenses.

The proposed bylaw change will put Catamount into the same category as homeowners and farmers. Homeowners and farmers are subject to the bylaw's restrictions on setbacks, building height, wetlands, etc., but if they meet the bylaw's requirements, they don't need special permission from a town board to improve their properties. Putting Catamount into the same category will not allow it to do whatever it wants; it will protect neighbors in the same way they are now protected with respect to homes and agricultural operations. And it will do what probably should have been done when the zoning bylaw was adopted many years ago, namely grandfathering Catamount.

Please go to the hearing and express your support for Catamount, and for Egremont's taxpayers. Catamount has been in town for 75 years. Mr. Hakim and his supporters shouldn't be able to tell Catamount what it can and can't do.

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Visit this group at <http://groups.google.com/group/EgremontPosts>.
For more options, visit <https://groups.google.com/d/optout>.

W. Brinker

From: Walter and Iris <rbungalow6@aol.com>
Sent: Tuesday, April 07, 2015 1:42 PM
To: W. Brinker
Subject: .BY Law Change

I am sending this email in support of the proposed BY-Law change. Catamount has been a good neighbor for years and as an Egremont resident I feel we should do whatever we can to support them.

Walter Rubenstein

Sent from my iPad

W. Brinker

From: Walter and Iris <rbungalow6@aol.com>
Sent: Tuesday, April 07, 2015 1:44 PM
To: W. Brinker
Subject: Proses BY-Law Change

As an Egremont resident I want to support the proposed by-law change. This town should do whatever it can to support our neighbor Catamount.

Iris Rubenetsin

Sent from my iPad

From: Harvey, Louann <lharvey@berkshirebank.com>
Sent: Tuesday, April 07, 2015 12:32 PM
To: W. Brinker

I support the by-law change for Catamount

Thanks,
Louann Harvey
AVP Mortgage Officer

[Click Here To Apply With Louann....](#)

N.M.L.S. # 763683
Berkshire Bank – Home Lending
244 Main Street • Gt. Barrington, MA 01230
P 413-644-3537 • C 413-446-3511 • F 413-528-2898

lharvey@berkshirebank.com

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W. Brinker

From: Eric <steambush@yahoo.com>
Sent: Wednesday, April 08, 2015 9:39 PM
To: W. Brinker
Subject: Bylaw change

I support the bylaw change in support of Catamount ski area being able to make improvements to its property.

Eric J. Bush, MD

Sent to you directly from Eric

W. Brinker

From: Karen Cumsky <kcumsky@earthlink.net>
Sent: Tuesday, April 07, 2015 12:40 PM
To: W. Brinker
Subject: For Planning Board re: Catamount Bylaw Change

To whom it may concern,

I will not be able to attend your hearing on April 8th but would like to add my name to the list of people supporting the proposed bylaw change that would put Catamount in the same category as homeowners and farmers. Thank you.

Regards,
Karen Cumsky

W. Brinker

From: Jade <jade@jademyst.com>
Sent: Wednesday, April 08, 2015 2:21 PM
To: W. Brinker
Subject: Re: Planning Board meeting re: Catamount

Dear Mr. Brinker:

I am unable to attend tonight's Planning Board meeting due to illness, but I wish to convey my support for the planned bylaw change that will put Catamount into the same category as homeowners and farmers. This is something that should have been done ages ago; Catamount is a long-time established business in this town, and it should have been grandfathered in when the bylaw was originally adopted. As long as Catamount follows the zoning bylaw requirements when making needed improvements, they should not have to jump through additional hoops in order to get things accomplished.

W. Brinker

From: Carol & Steve <idefam@gmail.com>
Sent: Wednesday, April 08, 2015 12:58 PM
To: W. Brinker
Subject: Tonight's Planning Board Hearing.

Hi Will,

I can't attend tonight's meeting but would like to support the zoning bylaw change having to do with the Catamount situation.

Thanks very much,

-Steve Ide

W. Brinker

From: Bonnie Oloff <bonnie.olloff@gmail.com>
Sent: Wednesday, April 08, 2015 9:04 AM
To: W. Brinker
Subject: Catamount By Law

i cannot come to the meeting tonight but i am in favor the new by law. catamount is an important part of our community and we should do everything we can to help them survive.

bonnie oloff

W. Brinker

From: Mark Roggen <MNRoggen@aol.com>
Sent: Tuesday, April 07, 2015 4:29 PM
To: W. Brinker
Subject: Please Forward to Egremont Zoning Board

ATTN: Town of Egremont Zoning Board Members

April 7, 2015

This note is to express my strong support for the proposed Egremont zoning bylaw change which would create By Right Zoning for the Catamount Ski Area.

In addition to recognizing the value that Catamount brings to the economy of Egremont as both a local tourist attraction and employer, I am among a number of Egremonters who work at the Ski Area and Adventure Park, and accordingly have first hand insight into the beneficial aspects of having this important recreational area as part of our town.

Respectfully submitted,

Mark N. Roggen

223 Egremont Plain Road #603

North Egremont, MA 01230

Phone: (413) 528-2300

Cell: (917) 488-6447

MNRoggen@aol.com